

(this applies only to old-age, wife's, widow's, widower's or husband's benefits);

(c) Your receipt of benefits on your own earnings record, which reduces (see § 404.407) your entitlement (or deemed entitlement; see § 404.420) to benefits on another individual's earnings record; and

(d) Your entitlement to benefits payable (or deemed payable) to you based on the earnings record of an individual entitled to a disability insurance benefit because of that individual's entitlement to workers' compensation (see § 404.408).

■ 12. Section 404.452 is revised to read as follows:

§ 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment.

(a) *Reporting requirements and conditions under which a report of earnings, that is, wages and/or net earnings from self-employment, is required.* (1) If you have not reached full retirement age (see § 404.409(a)) and you are entitled to a monthly benefit, other than only a disability insurance benefit, you are required to report to us the total amount of your earnings (as defined in § 404.429) for each taxable year. This report will enable SSA to pay you accurate benefits and avoid both overpayments and underpayments.

(2) If your wages and/or net earnings from self-employment in any month(s) of the year are below the allowable amount (see §§ 404.446 and 404.447), your report should include this information in order to establish your grace year (see § 404.435) and possible eligibility for benefits for those months.

(3) Your report to us for a taxable year should be filed on or before the 15th day of the fourth month following the close of the taxable year; for example, April 15 when the beneficiary's taxable year is a calendar year. An income tax return or form W-2, filed timely with the Internal Revenue Service, may serve as the report required to be filed under the provisions of this section, where the income tax return or form W-2 shows the same wages and/or net earnings from self-employment that must be reported to us. Although we may accept W-2 information and special payment information from employers, you still have primary responsibility for making sure that the earnings we use for deduction purposes are correct. If there is a valid reason for a delay, we may grant you an extension of up to 4 months to file this report.

(4) You are not required to report to us if:

(i) You reached full retirement age before the first month of your entitlement to benefits; or

(ii) Your benefit payments were suspended under the provisions described in § 404.456 for all months of a taxable year before the year of full retirement age, or for all months prior to your full retirement age in the full retirement age year, unless you are entitled to benefits as an auxiliary or survivor and your benefits are reduced for any month in the taxable year because of earnings and there is another person entitled to auxiliary or survivor's benefits on the same record, but living in a different household.

(b) *Report required by person receiving benefits on behalf of another.* When you receive benefits as a representative payee on behalf of a beneficiary (see subpart U of this part), it is your duty to report any earnings of the beneficiary to us.

(c) *Information required.* If you are the beneficiary, your report should show your name, address, Social Security number, the taxable year for which the report is made, and the total amount of your wages and/or net earnings from self-employment during the taxable year. If you are a representative payee, your report should show the name, address, and Social Security number of the beneficiary, the taxable year for which the report is made, and the total earnings of the beneficiary, as well as your name, address, and Social Security number.

(d) *Requirement to furnish requested information.* You, the beneficiary (or the person reporting on his/her behalf) are required to furnish any other information about earnings and services that we request for the purpose of determining the correct amount of benefits payable for a taxable year (see § 404.455).

(e) *Extension of time for filing report.* (1) *Request for extension to file report.* Your request for an extension of time, or the request of your authorized agent, must be in writing and must be filed at a Social Security Administration office before your report is due. Your request must include the date, your name, the Social Security number of the beneficiary, the name and Social Security number of the person filing the request if other than the beneficiary, the year for which your report is due, the amount of additional time requested, the reason why you require this extension (see § 404.454), and your signature.

(2) *Evidence that extension of time has been granted.* If you do not receive written approval of an extension of time for making your report of earnings, it

will be presumed that no extension of time was granted. In such case, if you do not file on time, you will need to establish that you had good cause (§ 404.454) for filing your report after the normal due date.

[FR Doc. 05-9994 Filed 5-18-05; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: PN-5084]

RIN 1400-AC01

Participation in the Exchange Visitor Program as Professor and Research Scholar

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: By this notice, the Department adopts as final with minor modification, the proposed rule published in the **Federal Register** on June 27, 2002. This rule amends the Department's Exchange Visitor Program regulations set forth at 22 CFR 62.20 by extending the duration of program participation for professors and research scholars from the current three years to five years. In addition, this rule implements a limitation on the eligibility of an extension for the professor and research scholar categories and implements a two-year bar for repeat participation to encourage and foster the purpose of the Mutual Educational and Cultural Exchange Act of 1961 ("Fulbright-Hays Act"). Additional minor modifications have been made throughout Sec. 62.20 for administrative purposes due to the implementation of the Student and Exchange Visitor Information System (SEVIS).

DATES: This rule becomes effective on the later of June 20, 2005, or the date upon which the Department of Homeland Security publishes a notice in the **Federal Register** announcing that it has completed the technical computer updates to its electronic Student and Exchange Visitor Information System (SEVIS) that are necessary to implement this rule.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, U.S. Department of State, 301 Fourth Street, SW., Room 734, Washington, DC 20547; telephone 202-203-5029; fax 202-203-5087; e-mail: Jexchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 4054 at 67 FR 43264, June 27, 2002, with a request for comments in the **Federal Register** regarding the authorized length of program duration for professors and research scholars. The rule proposed to lengthen the maximum program duration of this category from three years to five years.

The Department is implementing the change in maximum program duration and modifying the current regulations in order to develop a very simple, easy to administer, and user-friendly rule. In light of the favorable comments received, this rule is adopted to allow a five-year duration of program participation beginning with the participant's program begin date or initial program begin date (for continuing exchange visitors) identified in SEVIS and ending five years later. The five-year period of participation is calculated in calendar years from the participant's program begin date documented in SEVIS at the time the SEVIS record is validated. The Department assumes an exchange participant will actively pursue research or teaching opportunities for the entire five-year period. Generally, a participant in good standing with his or her program sponsor may depart and reenter the United States an unlimited number of times during the five calendar years. Thus, holiday visits, emergencies, consultations, attendance at professional meetings, and the like will not be prohibited or compromised.

It is extremely important to note, however, that the five-year period is not, as suggested in some comments, an aggregate of five years. The Department considered this approach and found it unworkable. Instead, this will be a calendar year, five-year period afforded to a participant on a "use or lose" basis which commences with the program begin date identified in SEVIS. For example, a research scholar who comes to an institution for two years and returns to his or her home institution for nine months will be eligible, as a program matter, to return to the same U.S. institution—or transfer to another—for an additional two years and three months. If the participant does not return to the United States until three months later, he or she has two years remaining on his or her program.

Comments indicated some confusion regarding the long-standing "12-month bar" rule set forth at Sec. 62.20(d)(ii). The 12-month bar applies to any non-immigrant and accompanying spouse or dependent who has held F or J non-immigrant visa status within the twelve-

month period immediately preceding the commencement of a professor or research scholar program. The 12-month bar remains in effect under this rule. If eligible for professor or research scholar category, the exchange participant is eligible for a five-year period of time for program participation under this category.

The accompanying spouse and dependents are also subject to the 12-month bar. While some J-2 spouses have made some sacrifices in order to accompany the J-1 exchange visitor, such sacrifice is compensated for by employment opportunities in the United States—often in research. If the J-2 visa holder is not subjected to the 12-month bar, the underlying objective for imposing the bar is defeated in that the J-2 visa holder could become a J-1 participant and the former J-1 participant would be afforded J-2 derivative status.

The Department proposed that participants afforded five years of program participation not be eligible to return to the United States as a repeat participant of the professor or research scholar category for a period of two years (24 months) immediately following completion of the five-year period. Almost all comments were in favor of the two-year bar for repeat participation of professors and research scholars. Individuals who have entered the United States under the auspices of the Exchange Visitor Program as a professor or research scholar, or who have acquired such status while in the United States, are not eligible for repeat participation as a professor or research scholar for a period of two years following the completion of the five-year period. For example, a professor who enters the United States on September 1, 2005, may leave the United States and return several times within the five years until August 31, 2010. After August 31, 2010, this individual cannot return to the United States in the professor or research scholar category for two years (*i.e.*, their program begin date as a professor or research scholar could not be earlier than September 1, 2012). Sponsors are not to issue Forms DS-2019 to proposed participants who meet this restriction.

However, if a participant completes a professor or research scholar exchange program at one institution for a period of less than five years, then remains outside the United States for a minimum period of two years, he or she is eligible to begin another five-year program. If the period of time outside the United States is less than two years, the participant is still considered to be within the five-year period of time from

the initial program. If the participant completes a program at one institution, which is less than five years (*e.g.*; four years), the participant has the option to have the current program extended up to the maximum duration of five years, transfer to another institution for one additional year, or return home and fulfill the two year bar.

This rule also permits the extension beyond five years for participants under the direct sponsorship of a Federally Funded National Research and Development Center ("FFNRDC") or a U.S. Federal Laboratory. These sponsors will be identified in SEVIS with a separate program serial (G-7) in order to differentiate these programs from other sponsors designated to conduct exchange activities in the categories of research scholar and professor. A "G-7" program serial will be assigned to eligible programs as determined by the Department. Once fully implemented in SEVIS by the Department of Homeland Security, professors and research scholars currently in the United States who have begun their exchange activity, as identified by the program begin date in SEVIS, will be eligible for extensions of their program to the five year maximum. Until the Department of Homeland Security develops the system change requirements necessary to implement the new five-year duration, such extensions must be submitted to the Department via SEVIS as extensions beyond the maximum duration of participation.

Analysis of Comments

The proposed rule was published for comment on June 27, 2002. The Department received twenty-six comments regarding this proposal, all of which endorsed the proposed change. There were not any comments that objected to the changes, however nine of the responses thought that the five-year period should be an aggregate period of time. The Department finds this method unworkable and not easily managed.

Five of the comments required clarification on use of the 12-month bar. As stated in the supplementary information, the 12-month bar applies to any non-immigrant and accompanying spouse or dependent that has held F or J non-immigrant visa status within the twelve-month period immediately preceding the commencement of a professor or research scholar program. The 12-month bar remains in effect under this rule.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule after it was published as a proposed rule on June 27, 2002.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Act (5 U.S.C. 601(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize

litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange programs.

■ Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Public Law. 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

■ 2. Section 62.20 is revised to read as follows:

§ 62.20 Professors and research scholars.

(a) *Introduction.* These regulations govern Exchange Visitor Program participants in the categories of professor and research scholar, except:

(1) Alien physicians in graduate medical education or training, who are governed by regulations set forth at § 62.27; and

(2) Short-term scholars, who are governed by regulations set forth at § 62.21.

(b) *Purpose.* The purpose of the Exchange Visitor Program, in part, is to foster the exchange of ideas between Americans and foreign nationals and to stimulate international collaborative teaching, lecturing and research efforts. The exchange of professors and research scholars promotes the exchange of

ideas, research, mutual enrichment, and linkages between research and educational institutions in the United States and foreign countries. It does so by providing foreign professors and research scholars the opportunity to engage in research, teaching and lecturing with their American colleagues, to participate actively in cross-cultural activities with Americans, and ultimately to share with their countrymen their experiences and increased knowledge of the United States and their substantive fields.

(c) *Designation.* The Department of State may, in its sole discretion, designate *bona fide* exchange visitor programs, which offer foreign nationals the opportunity to engage in research, teaching, lecturing, observing, or consulting at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions in the United States.

(d) *Visitor eligibility.* An individual may be selected for participation in the Exchange Visitor Program as a professor or research scholar subject to the following conditions:

(1) The participant must not be a candidate for a tenure track position;

(2) The participant has not been physically present in the United States as a nonimmigrant pursuant to the provisions of 8 U.S.C. 1101(a)(15)(F) or (J) for all or part of the twelve-month period immediately preceding the date of program commencement set forth on his or her Form DS–2019, unless:

(i) The participant is transferring to the sponsor’s program pursuant to provisions set forth in § 62.42;

(ii) The participant’s presence in the United States was of less than six months duration; or

(iii) The participant’s presence in the United States was pursuant to a short-term scholar exchange activity as authorized by § 62.21; and

(3) The participant is not subject to the prohibition against repeat participation set forth at § 62.20(i)(2).

(e) *Issuance of Form DS–2019.* The Form DS–2019 must be issued only after the professor or research scholar has been accepted by the institution where he or she will participate in an exchange visitor program.

(f) *Location of the exchange.*

Professors or research scholars must conduct their exchange activity at the site(s) of activity identified in SEVIS, which may be either the location of the exchange visitor program sponsor or the site of a third party facilitating the exchange with permission of the Responsible Officer. An exchange visitor may also engage in activities at

other locations if such activities constitute occasional lectures or consultations permitted by paragraph (g) of this section. All such sites of activity must be entered into SEVIS while the exchange visitor's SEVIS record is in Initial or Active status.

(g) *Occasional lectures or consultations.* Professors and research scholars may participate in occasional lectures and short-term consultations, if authorized to do so by his or her sponsor. Such lectures and consultations must be incidental to the exchange visitor's primary program activities. If wages or other remuneration are received by the exchange visitor for such activities, the exchange visitor must act as an independent contractor, as such term is defined in 8 CFR 274a.1(j), and the following criteria and procedures must be satisfied:

(1) *Criteria.* The occasional lectures or short-term consultations must:

- (i) Be directly related to the objectives of the exchange visitor's program;
- (ii) Be incidental to the exchange visitor's primary program activities;
- (iii) Not delay the completion date of the exchange visitor's program; and
- (iv) Be documented in SEVIS.

(2) *Procedures.* (i) To obtain authorization to engage in occasional lectures or short-term consultations involving wages or other remuneration, the exchange visitor must present to the responsible officer:

(A) A letter from the offeror setting forth the terms and conditions of the offer to lecture or consult, including the duration, number of hours, field or subject, amount of compensation, and description of such activity; and

(B) A letter from the exchange visitor's department head or supervisor recommending such activity and explaining how the activity would enhance the exchange visitor's program.

(ii) The responsible officer must review the letters required in paragraph (g)(2)(i) of this section and make a written determination whether such activity is warranted, will not interrupt the exchange visitor's original objective, and satisfies the criteria set forth in paragraph (g)(1) of this section.

(h) *Change of activity.* At the discretion and approval of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing. Because these activities are intertwined, such a change of activity is not considered a change of category necessitating formal approval by the Department of State and does not require the issuance of a new Form DS-2019 to reflect a change in category.

Such change in activity does not extend the exchange visitor's maximum duration of program participation.

(i) *Duration of participation.* The permitted duration of program participation for a professor or research scholar is as follows:

(1) *General limitation.* A professor or research scholar may be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete his or her program, provided such time does not exceed five years. The five-year period of permitted program participation is continuous and begins with the initial program begin date documented in SEVIS or the date such status was acquired via a petition submitted and approved by the Department of Homeland Security (DHS) as documented in SEVIS and ends five years from such date.

(2) *Repeat participation.* Exchange participants who have entered the United States under the Exchange Visitor Program as a professor or research scholar, or who have acquired such status while in the United States, and who have completed his or her program are not eligible for participation as a professor or research scholar for a period of two years following the end date of such program participation as identified in SEVIS.

(3) *Extensions.* A responsible officer may not extend the period of program duration beyond the five-year period of maximum program duration authorized for professor and research scholar participants. The Department may, in its sole discretion, authorize an extension beyond the permitted five-year period, as submitted by a "G-7" program sponsor, upon successful demonstration of the following:

(i) The participant for whom an extension is requested is engaged in a research project under the direct sponsorship of a Federally Funded National Research and Development Center ("FFNRDC") or a U.S. Federal Laboratory;

(ii) The FFNRDC or U.S. Federal Laboratory requesting the extension on behalf of the participant has determined, through peer review, that the participant's continued involvement in the project is beneficial to its successful conclusion; and

(iii) The Secretary of the Department of Homeland Security has determined in his/her discretion that the extension may be approved;

(iv) The extension request is for not more than five years.

Dated: May 10, 2005.

Patricia S. Harrison,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05-10020 Filed 5-18-05; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9202]

RIN 1545-BD25

Additional Rules for Exchanges of Personal Property Under Section 1031(a)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that replace the use of the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) for determining what properties are of a like class for purposes of section 1031 of the Internal Revenue Code (Code). The regulations affect taxpayers that engage in like-kind exchanges of depreciable tangible personal property. **DATES:** *Effective Date:* These regulations are effective May 19, 2005.

Applicability Dates: For dates of applicability, see § 1.1031(a)-2(d).

FOR FURTHER INFORMATION CONTACT: J. Peter Baumgarten, (202) 622-4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On August 13, 2004, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG-116265-04; 69 FR 50108) by cross reference to temporary regulations (TD 9151; 69 FR 50067) under section 1031(a). These amendments relate to the transition from the use of the four-digit codes under the SIC system to the six-digit NAICS for determining product classes of depreciable tangible personal property exchanged under section 1031. No written or electronic comments in response to the proposed regulations or requests to speak at a public hearing were received, and no hearing was held. The proposed regulations under section 1031 are adopted by this Treasury decision, and the temporary regulations are removed.